* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : March 14, 2007
Date of decision: May 07, 2007

\+ FAO No. 110/2004

\# VINOD KUMAR GUPTA ..... APPELLANT
! Through Mr. Nitin Soni, Advocate

versus

$ SANTOSH GUPTA ..... Respondent.
^ Through Mr. Vijay Sharma, Advocate

CORAM :-
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

:Dr. S. Muralidhar, J.

1. The judgment dated 16.2.2004 passed by the Additional District Judge, Delhi dismissing the appellant's appeal, HMA No 1113/01/97 seeking divorce from the respondent on the ground of cruelty is challenged in this appeal under Section 13(1)(ia) of the Hindu Marriage Act, 1955(`Act').

2. The parties were married on 16.5.1985. Three children were born to them. At the time of filing of the petition in the year 1997, the three children were aged about 10 years, 4 years and 2 years respectively.

Case of the appellant

3. In his petition before the Trial Court, the appellant's case of cruelty was based on the following averments:

(i) The appellant claimed that soon after the marriage, the respondent started behaving irrationally with the appellant and used to create embarrassing scenes with all the members of the family. It is claimed that the respondent was under the control of some super-natural power. She used to abuse the parents of the appellant. The appellant used to take the respondent to various places for her treatment in February, March and April, 1992. It is claimed that when she returned from her parental home, she used to hurl abuses at the appellant and his parents and also used to physically hurt the petitioner.

(ii) The appellant stated that on 7.5.1992 the behaviour of the respondent became so unbearable that the appellant had shifted to the separate house at Tri Nagar. A reference has been made to the incident made on 8.7.1993 when the respondent was supposed to have abused the appellant after seeing the house belonging to the father of the appellant and demanded Rs.4 lakhs from the father of the appellant. The appellant who had shifted the premises at Tri Nagar on 17.4.1994 to Janta Flats, Ram Pura, Delhi.

(iii) It is stated that as a result of the continuous harassment by the respondent of the appellant the father of the appellant filed a suit for permanent injunction before the District Judge, Delhi and interim injunction was granted in those proceedings restraining the defendants therein from entering into the house of the plaintiff at Tri Nagar.

(iv) There was an incident on January 15, 1996 when the respondent left the home without prior intimation to the appellant. On 31.1.1996 she threatened the parents of the appellant that she would kill herself after killing the appellant. The appellant claimed that on the next date

he was compelled to call the police, who left after pacifying the respondent. On 2.2.1996 the respondent again left the house at 9.30 am without informing the appellant for which the appellant lodged an FIR with the police. Later on, the appellant found that the respondent had gone to Balaji, a place in Rajasthan, An incident occurred on 14.5.1996 which required intervention by the police. On 27.7.1996 the respondent harassed the appellant by abusing him and his parents demanded a sum of Rs.4 lakhs. On 17.12.1996 she again created a scene as a result of which the appellant on 27.12.1996 wrote to the SDM. When he returned home she locked him out. He remained outside the house for three days thereafter.

Case of the respondent

4. The respondent has a very different version to narrate in the written statement. She states that she is a Post Graduate and has MA B.Ed. degree. It is claimed that till the middle of 1995 she was not suffering from any serious ailment and there was no question of getting her treated by anyone till then. It is denied that she misbehaved with the appellant and his family members as alleged or she was in the habit of creating scenes and blaming the appellant and his parents or that she would not do household work. It is stated that the house at Tri Nagar was taken on rent by the father of the appellant for the appellant and that the appellant himself had requested his father to allow him to live in his Janta Flats, Rampura, Delhi which the father of the appellant permitted. She states that on 4.1.1995 when the respondent was not able to prepare food for the appellant by 7.30 a.m. since the third child was very young, the appellant began beating the respondent. Likewise on 25.11.1995 the respondent had gone to the house of her parents of the appellant and

abused them. She states that the relationship between the appellant and his father was always cordial.

5. As regards the incident of 15.1.1996 the respondent claims that she was beaten by the appellant even as she got up at around 7.00 A.M. as a result of which she had again gone to a nearby park. The incident of 31.1.1996 is denied. She stated that on 2.2.1996 she went to Balaji with the consent of the appellant. The incidents of 3.4.1996, 8.4.1996 and 16.4.1996 are denied.

6. The case of the respondent is that soon after marriage, there were dowry demands made by the appellant and his parents. The appellant was expecting that the respondent, being an educated girl, would get employed and when that did not happen, the demand for dowry demand increased. Therefore, she was often physically beaten and asked to leave the house.

7. It is stated that because of misbehaviour of the appellant, the respondent's health deteriorated, the appellant started taking her to one Tantrik, known as Bhardwaj, who used to give liquor to the respondent forcibly, as a result of which the respondent became weak and her mental condition was affected. The attempts by the respondent's father and respondent's brother to persuade the appellant and his parents not to harass the respondent did not have any effect.

Evidence at the trial_

8. The appellant examined himself as PW-1, who narrated the incidents of 1996. He brought on record the copies of the complaints

dated 14.5.1996 and 27.12.1996. He referred to the respondent leaving the matrimonial home on 2.2.1996 without prior intimation and marked a copy of the complaint made by him in this regard with the police. He states that on 3.2.1996 he received a telephone call from the respondent from Balaji and he went there and fetched her back.

9. In the cross-examination, the appellant admitted that the parties lived together till February, 1997 and that no complaint in writing was made to the father or the brother of the respondent about the incidents of harassment by the respondent of the appellant. As regards the visit to Haridwar on 6.2.1992, the appellant stated that the respondent had gone there with her father and her brother for her treatment. He further states that in March 1992 the father of the respondent had accompanied both of them to Baleshwar for treatment since the respondent was suffering from some mental problem. However, he claimed not to know what the age of his elder son was when the respondent was taken to the hospital for the first time. He denied the incident of 4.1.1995 when he is said to have beaten the respondent. He admitted that the respondent was taken to one Bhardwaj at Samepur Badli as they were suspecting her to be in possession of some evil sprits. However, he denied having treated the respondent cruelly.

10. PW-2 was Assisstant Sub-Inspector Dalbir Singh who proved that the appellant had made a complaint on 2.2.1996 at Police Station Keshav Puram about the respondent going missing.

11. PW-3 Shri Charanjit Singh was examined to prove the incident

of 3.12.1998 when the respondent is stated to have come to the house of the father of the appellant and created a nuisance by shouting. The witness stated that being tired of the aforesaid daily acts of the respondent, he along with other residents lodged a report with the Police Post at Shanti Nagar, Police Station Keshav Puram. The same incident is spoken by Mr. Ishwar Chand, PW-4 and Ashok Bhargav, PW-5.

12. The respondent examined herself as RW-1. Her father, who was examined as RW-2, supported her case.

13. Regarding the treatment by the Tantrik Bhardwaj, the respondent's father stated in his affidavit by way of examination-in-chief as under:

> "8. That I know that my daughter used to be taken to a temple situated at Samay Pur Badli, where SH. Bhardwaj a "tantrik" used to meet people on every Sunday who used to be user the influence of evil sprits.
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> 9. That my daughter was generally taken on every Sunday by the petitioner to Shri Bhardwaj and he used to take 3-4 cloves and 2-3 cardimums along with one bottle of liquor. All these things used to be handed over to Shir Bhardwaj, who after offering a bit of liquor to "BHARON JI' out of the said bottle used to be given both in this morning and in the evening every day to the respondent as the respondent was thought to be under the influence of evil sprits. The petitioner also used to take with him meet of Goat "KALEJI" to Shri Bhardwaj which was to be thrown by the side of the road after visiting Shri Bhardwaj with the plea that by doing so the respondent would get rid of evil sprits. This went about 1-1/2 years for so. As a result there of the health of my daughter was badly effected. My daughter was only taken once or twice to Bara Hindu Rao Hospital and similarly once or twice to Ram Manohar Lohia Hospital. She was never got treated from qualified doctors in a proper manner."

14. Her father also maintained that there was a constant demand for dowry by the appellant and he used to beat her when she did not oblige.

Conclusions of the Trial Court

15. The Trial Court held that despite the allegations made by the appellant against the respondent, the fact remained that the parties lived together till 1997 and the last child was born some time in 1995. They also shifted to a separate accommodation in Tri Nagar during this period. The allegation were held to constitute normal wear and tear of married life. The only allegation that had some substance, according to the Trial Court, was that the respondent left the matrimonial home on 2.2.1996. However, the Trial Court concluded that this incident was not of as serious a consequence as was sought to be made out by the appellant. The respondent informed the petitioner on the next date that she was was in Balaji and after that the appellant went there and fetched her. Thereafter they again lived together. As regards the incident on 3.12.1996 the Trial Court found that the witnesses had contradicted each other. The Trial Court concluded that the appellant had not made out a case of cruelty against the respondent.

Submissions of learned counsel

16. Learned counsel for the appellant submitted that the Trial Court has not taken note of the complaints made by the appellant on 14.5.1996 and 27.12.1996 to the police although which has been marked as exhibits in the Trial Court. There was no cross-examination of the appellant on these aspects. A reference is made to

the incident of 3.12.1998 in which the respondent had created a big scene outside the appellant's house and in support of which the appellant had produced three witnesses, PW's 3 to 5. It is submitted that this evidence was ignored by the Trial Court. It is stated that the respondent was undergoing treatment for mental illness and this was not denied by the respondent. The appellant had made all necessary efforts to get her treated.

17. Finally it is stated that it is the appellant who has brought up the three children who have suffered on account of the troubled marriage. A reference has been made to the observations made by the Trial Court in its order dated 7.5.2002 and 8.5.2002 to contend that none of the children want to meet the respondent because of her behaviour. Only on two occasions did the respondent make a request that she wanted to meet the children.

Case of cruelty not made out_

18. The petition and the evidence on record do present a very disturbing scenario of a troubled marriage. Numerous incidents have been adverted to by the appellant which go to show that things were not well between the parties. One major ground on which the case of cruelty is stated to be made out is the respondent having to be treated for some mental ailment which is also spoken to by the father of the respondent.

19. The respondent's version however is different. The manner in which the appellant went about treating the ailment has been spoken to by the father of the respondent in his affidavit by way of examination-in-chief. This has already been extracted. Further during

his cross-examination, he has denied accompanying the daughter to Haridwar or to Balaji. He states:

> "Respondent was taken once or twice at D.Ram Manohar Lohia and Hindu Rao Hospital but no proper treatment was given to the respondent. The treatment was for the tension created because of the attitude of the petitioner and his family members. It is correct that respondent was taken to one Bhardwaj for treatment but no treatment was given by Uma Shankar. He was only doing religious pujas for peace of mind."

20. There are many stressful situations in a marriage for which the either spouse may have to receive medical attention. There is a diffrence between mental stress and mental unsoundness. If the respondent was unable to receive proper treatment for her mental stress caused by the appellant himself, and this aggravated her mental strain, it can hardly be construed as a cruel behaviour of the respondent.

21. As regards the incidents of 14.5.1996 and 27.12.1996, the complaints made by the appellant to the police and the SDM respectively have been marked as exhibits. However, the fact remains that the parties continued to live together even thereafter. Unlike the entries related to the incident of 2.2.1996, for which a police officer was examined, no such evidence has been produced to show that these complaints were followed up with the police. As observed by the Trial Court, the appellant did not attach much importance to these complaints and continued living with the respondent even thereafter.

22. The evidence of PW-3 to PW-5 speak of an incident of 3.12.1998 which is more than 18 months after the filing of the petition. By that time the relationship had completely broken down. It would not be correct to adjudge the behaviour of the respondent during the

marriage by to this one incident is stated to have taken place many months after filing of the divorce petition.

23. Likewise the reluctance of the children to go back to the respondent cannot by itself be seen as a cruel treatment by the respondent of the appellant. The respondent also perhaps realizes that the troubled marriage between the parties adversely impacts the children and therefore does not want to precipitate matters further.

24. These are difficult matters where a categorical view that one party has treated the other with cruelty cannot be arrived at with certainty. There are different shades of a troubled marriage where the parties are unable to live together for various reasons. All of those reasons may not answer the description of cruelty. At the same time, the Court cannot be unmindful of the fact that the status of a divorced woman in society is still fragile and she at a distinct disadvantage in fending for herself. Therefore, the Court would be cautious in easily accepting the case of cruel treatment by the wife of the husband. That can be no manner of doubt that both spouses have invested a lot of energy in a marriage like the present one out of which three children have been born. Unfortunately, they have been unable to, at the end of these many years, find happiness for themselves and for the children. The question that the appellant poses here is whether the respondent alone is responsible for that outcome. In the considered view of the Court, the evidence on record cannot support an affirmative answer to that question.

25. In the ultimate analysis, the refusal by the Trial Court to grant divorce to the appellant on the ground of cruelty cannot be termed as

perverse or erroneous warranting interference by this Court in appeal.

26. The appellant has referred to a large number of cases along with the written submissions to press of divorce on the ground of irretrievable breakdown of marriage. He places reliance on ***Naveen Kohli v. Neelu Kohli*** JT 2006(3) SC 491, ***Vinita Saxena v. Pankaj Pandit*** JT 2006 (3) SC 587, ***V.Bhagat v. D.Bhagat (Mrs.)*** (1994) 1 SCC 337 and ***Romesh Chander v. Smt. Savitri*** AIR 1995 SC 851.

27. Ultimately each of the above cases has turned on its facts and no two cases as identical facts. The Court is not inclined to accept the plea of the appellant that the marriage should be dissolved on the ground of irretrievable break down of marriage.

28. Nothing in the impugned judgment of the Trial Court in the present case as discussed above has persuaded to this Court to take a different view. Accordingly, this appeal is dismissed.

S. MURALIDHAR,

J.

May 07, 2007
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